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SEP 13 1991

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In the Matter of  
  
Amendment of Part 74 of  
the Commission's Rules  
and Regulations with  
Regard to the Low Power  
Television Service

To: The Commission

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RM-7772

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Comments of MSTV

The Association for Maximum Service Television, Inc. ("MSTV") hereby comments on the above-captioned petition filed by the Community Broadcasters Association (CBA) on June 11, 1991, and placed on public notice August 13, 1991 (FCC Report No. 1855).

The CBA Petition seeks unspecified but far-reaching "regulatory relief" for low power television stations. CBA begins by seeking highly specific changes in such mundane regulations as the name of the low power service (delete "low") and the number of letters in LPTV call signs (four- or six-letter call signs instead of call signs with five alphanumeric symbols). CBA moves rapidly, however, to a broad plea that low power stations "in general ... be treated the same as conventional stations under the Commission's non-engineering rules." CBA Petition at i.

MSTV is an organization of broadcast stations devoted to maximizing the technical quality of the over-the-air broadcast system. The CBA Petition implicates MSTV's concerns in two important respects. First, CBA's

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request for relaxation of the current power limitations on low power operations creates further risk of interference to conventional broadcast service. Second, though CBA is careful nominally to exclude from its prayer for relief any change in the secondary status of low power stations, CBA is clearly seeking to further entrench low power stations and enhance their status vis-a-vis conventional full-service broadcast stations. Of particular concern to MSTV and its members is the certainty that in the relatively near future a significant number of low power stations in and around most major markets and some smaller markets as well will be displaced by the initiation of full-service terrestrial broadcast advanced television (ATV) service.<sup>1/</sup> Whatever relief, if any, the Commission determines to grant CBA, it must clearly and unequivocally reaffirm, as it has done repeatedly in the past, that low power stations will not be permitted to impede the roll out of ATV.

I. Relaxation of LPTV Power Limits

CBA requests that the Commission relax the power limits for low power stations of 10 watts for VHF and 1,000 watts for UHF. CBA's proposed alternative, however, is not entirely clear. Though CBA implies that low power stations should be permitted to operate without any universally

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<sup>1/</sup> In many cases it may, of course, be possible to provide those displaced low power stations with replacement channels.

applicable power limitations other than a prohibition on causing new interference, CBA ultimately proposes that

"[a]t a minimum, each [low power] station should be able, subject to interference standards, to apply for facilities that provide principal city grade service to the community it can demonstrate that it serves, however that 'community' may be defined for a particular station." CBA Petition at 6.

CBA's Petition contains no justification for this dramatic change in television spectrum management other than the entirely circular reasoning that each low power station "should be permitted to operate with sufficient facilities to reach the people it serves." *Id.* Nor does CBA provide any assistance in sorting through the many difficult issues which would be presented by any effort to implement its vague and open-ended proposal (e.g., how is 'community' defined; what is the threshold showing a station must make to 'demonstrate' it serves that community).

In any event, MSTV is gravely concerned by the potential impact of CBA's proposal on low power station interference to full-service stations. As MSTV has observed on numerous occasions, the concept of "secondary" status, though sound in theory, is extremely flawed in practice. See generally MSTV Petition for Inquiry, In the Matter of Degradation of Television Broadcast Service, filed October 4, 1989, at 37-41. Not only do actual field strengths differ substantially from the predicted levels utilized to evaluate initial applications, but the follow up requirement to eliminate any actual interference experienced in the

field is premised upon viewer complaints and is thus an utterly unreliable "safeguard." Secondary status is, then, a largely, if not entirely, toothless protection.

It is in part for this reason that the Commission has admirably adhered to its strict scheme of "go-no-go" mileage separations and height/power limitations in licensing full-service television stations, abandoning the discredited "drop-in" approach developed initially and reaching its zenith in the context of AM radio.<sup>2/</sup> CBA is in essence requesting a return to the AM allotment scheme and its proposal should be emphatically rejected.

## II. LPTV Displacement By Full-Service ATV

The Commission has stated its intention to select a terrestrial broadcast ATV standard by the second quarter of 1993. The Advanced Television Test Center, of which MSTV is a founding member, has initiated an intense and extremely expensive laboratory testing program for the six proponent ATV systems which have been certified by the Commission's Advanced Television Advisory Committee. As long anticipated, five of these systems are "simulcast" systems, proposing to utilize a second and separate "stand alone" broadcast channel for ATV service. The Commission has also

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<sup>2/</sup> The mileage separations were also designed to assure the development of an adequate number of full-service stations by preventing the first-in stations from occupying unduly large areas. By expanding the reach of existing low power stations, CBA's proposal could also be expected to reduce the spectrum available for additional low power stations.

declared that the additional spectrum required to implement any such simulcast ATV system will have to come from the current VHF and UHF television bands. Advanced Television Systems and Their Impact on Existing Television Service, Tentative Decision and Further Notice of Inquiry, MM Docket 87-268, FCC 88-288, at ¶ 81 (1988). The VHF and UHF bands in many major markets are, of course, fully saturated with NTSC stations. Id. at ¶¶ 60-72. Thus, implicit in the Commission's conclusion is the assumption that the ATV transmission system ultimately selected will be sufficiently

remaining channel in the VHF and UHF bands will be required to replicate the current full-service NTSC system. And in many other markets, channels currently utilized by low power operators will be required.

That a substantial number of low power stations will face displacement by ATV is, then, beyond doubt. That the Commission has recognized this fact from the initiation of its ATV inquiry is also clear. Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, RM-5811, Mimeo No. 4074, at 3 n.4 (July 17, 1987)(exempting low power stations from freeze on new NTSC applications in top 30 markets because they "constitute a secondary service and are subject to displacement by a primary service" and therefore "will not restrict Commission options"). And the Commission has continued to communicate this fact to low power applicants and permittees, emphasizing the potential for displacement both on the low power construction permits themselves and in the notices by which it has opened new filing windows.<sup>3/</sup>

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<sup>3/</sup> See, e.g., Notice of Limited Lower Power Television/Television Translator Filing Window, PN 12124, slip op. at 1 n.1 (March 12, 1991):

Since [the 1987 freeze], numerous low power TV and TV translator stations have been authorized in and around these urban areas; areas for which available broadcast spectrum for future ATV systems is most limited. It is possible that some of these secondary stations may be displaced in channel if and when the spectrum is needed by full-service

(footnote cont'd)

This principle is, of course, nothing more than a continuation of the Commission's consistent practice of giving "proposed investors in LPTV operations ... explicit, full and clear prior notice that operation in the LPTV service entails the risk of displacement." Community Broadcasters Ass'n, 59 RR2d 1216, 1217 (1986).<sup>4/</sup> And it is for this reason that the Commission has repeatedly rebuffed CBA's attempts to protect low power licensees from

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(footnote cont'd)

television stations for ATV use. The restriction against additional new stations in and around these urban areas is intended to minimize the extent to which lower power TV and TV translator service to the public may be disrupted. In this regard, low power television and television translator stations continue to have secondary status with regard to the introduction of ATV service.

<sup>4/</sup> The secondary status of low power stations follows from the line of descent from translator and booster operations to low power. A concern with interference to full-power stations has pervaded the Commission's consideration of translator and booster stations since the early 1950s. See, e.g., Television Translators -- A Historical Perspective, in An Inquiry into the Future Role of Low-Power Broadcasting (Notice of Inquiry), 68 F.C.C.2d 1525, 1541-49 (1978). Early Commission decisions treated translators and boosters as "tenants at sufferance." Id. at 1545. The Commission's inquiry into low power operations presumed the continuation of this status from the outset. See Inquiry into the Future Role of Low Power Television Broadcasting (Notice of Proposed Rulemaking), 82 F.C.C.2d 47, 70-72 (1980); Inquiry into the Future Role of Low Power Television Broadcasting (Order on Processing Standards), 84 F.C.C.2d 713, 731 (1981); Inquiry into the Future Role of Low Power Television Broadcasting (Further Notice of Proposed Rulemaking), 87 F.C.C.2d 610, 613 (1981).

displacement. Id. See also Balcones Broadcasting Limited,  
3 FCC Rcd. 2528 (1988).<sup>5/</sup>

CBA has learned that it cannot succeed with a  
frontal assault on the basic question of secondary status  
and protection from displacement. But by this "back-door"

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<sup>5/</sup> See, e.g., Television Satellite Stations, Review  
Of Policy and Rules, 5 F.C.C. Rcd. 5567, 5569 (1990) ("LPTV  
stations, like translators, are a secondary service,  
unprotected against new television allotments. They are not  
generally considered as a service in allotment and licensing  
proceedings"); Amendment of the Commission's Rules  
Concerning Full Power Television, Low Power Television and  
Television Translator Stations, 3 F.C.C. Rcd. 1974, 64  
R.R.2d 1103 (1988) (LPTV stations "must give way to a  
full-service station proposing a mutually exclusive use of a  
frequency"); Univision, Inc., 4 F.C.C. Rcd. 2417, 2418, 66  
R.R.2d 170 (1989) (LPTV stations "are required to relinquish  
their frequency if a full-service station wishes to commence  
operations using the same channel"); Changes in the Rules  
Relating to Noncommercial, Educational FM Broadcast  
Stations, 57 R.R.2d 107, 115 (1984) (LPTV stations can be  
displaced by new noncommercial FM assignments); 960 Radio,  
Inc., FCC 85-578, slip op. at 2 (1985) ("In effect, the  
allocation of an FM or TV broadcast channel to a community  
reserves that channel for a full-service station; any  
broadcast who constructs or relocates a translator (or other  
secondary service) to within interference distance of that  
reserved channel does so at its own risk"); Mark L.  
Wodlinger, 101 F.C.C.2d 762, 58 R.R.2d 1006, 1011 (Rev. Bd.  
1985) (concerns over "anticompetitive impact" of LPTV  
ownership lessened by secondary status of LPTV stations),  
rev. denied, FCC 86I-93 (July 22, 1986); Elba Development  
Corp., 5 F.C.C. Rcd. 6767, 68 R.R.2d 979 (1990) (LPTV  
stations are "by nature secondary services"); Rev. Dr.  
Carrie L. Thomas, 5 F.C.C. Rcd. 3765, 67 R.R.2d 1493 (1990)  
666701; Commission Policy Manual, Manual of the



approach, it apparently hopes to accomplish that same end indirectly by acquiring more and more regulatory "non-engineering" indicia of full-service status. How else can one explain the CBA's eagerness for its members to assume regulatory "relief" which conventional broadcasters regard in many instances as anachronistic, uneconomic burdens (e.g., network-affiliate restrictions and multiple and cross-ownership limitations)?

The Commission must reject this veiled attempt to boot strap the low power industry into allocative parity with full-service stations. Where CBA can demonstrate a specific harm from a specific regulation, e.g., difficulty getting Arbitron ratings because of call sign formats, narrow, focused relief may be warranted. But it would be utterly inappropriate, particularly at this juncture in the development of full-service ATV, to issue the broader proclamations of parity and reassurances sought by CBA. And, whatever action is taken on CBA's proposals, the Commission must expressly and emphatically reissue its notice to low power operators that the ATV implementation

process may well require displacement of a substantial  
number of low power stations.

Respectfully submitted,

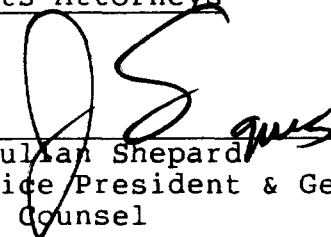
ASSOCIATION FOR MAXIMUM  
SERVICE TELEVISION, INC.

By: 

Jonathan D. Blake  
Gregory M. Schmidt

Covington & Burling  
1201 Pennsylvania Ave., N.W.  
P.O. Box 7566  
Washington, D.C. 20044  
(202) 662-5000

Its Attorneys

  
Julian Shepard  
Vice President & General  
Counsel

Association for Maximum  
Service Television, Inc.  
1400 16th Street, N.W.  
Suite 610  
Washington, D.C. 20036  
(202) 462-4351

September 13, 1991

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing  
Comments of MSTV was hand delivered on September 13, 1991, to:

Peter Tannenwald, Esq.  
Counsel to Community Broadcasters  
Association  
Arent, Fox, Kintner,  
Plotkin & Kahn  
1050 Connecticut Avenue, N.W.  
Suite 600  
Washington, D.C. 20036

*Pamela A. Brooks*